

Children of Merep v. Youlbeluu Lineage, 12 ROP 25 (2004)
**CHILDREN OF NGIRBOKETERENG MEREK,
Appellants,**

v.

**YOULBELUU LINEAGE,
Appellee.**

CIVIL APPEAL NO. 03-038
LC/K 02-61, 02-62, 02-63, & 02-64

Supreme Court, Appellate Division
Republic of Palau

Argued: October 29, 2004
Decided: November 24, 2004

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Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

PER CURIAM:

This appeal follows the Land Court's adjudication and determination of ownership of land identified by the Tochi Daicho as Lots 806, 807, and 808 known as Ngebelau and Ngelung (Worksheet Lot No. 90-6116A) and Lot 809, known as Ngetbelau (Worksheet Lot No. 90-6116B). The Land Court found that one of four lots owned by Merep passed to his son Ngirboketereng and that the other parcels of land passed, according to Palauan custom, to the Youlbeluu Lineage. The children of Ngirboketereng ask us to reverse the Land Court's decision in part, and award them all of the property at issue. Because no Palauan statute governed the disposition of the lands at issue, we affirm the decision of the Land Court to award ownership of the lots in accordance with Palauan custom.

BACKGROUND

The Tochi Daicho identifies Merep as the owner of Lots 806, 807, 808, and 809. Merep died intestate in June 1957, survived by his wife, his two children Ngirboketereng and Tumakreng, one sister and four brothers. After Merep's death, an eldecheduch was held, but the

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parties dispute what happened at the eldecheduch relevant to Merep's parcels of land. Appellants, the children of Ngirboketereng, argued before the Land Court that all four lots were awarded to their father. Appellees, on behalf of the Youlbeluu Lineage, claimed that Ngirboketereng received only Lot 809 at the eldecheduch and the other land was given to the Lineage.

After evaluating the testimony of various witnesses, the Land Court found that only Lot 809 was distributed to Ngirboketereng at the eldecheduch. The Land Court further concluded that Merep's remaining land, Lots 806, 807, and 808, passed, according to Palauan custom, to the Youlbeluu Lineage, which included Merep's surviving siblings and the children of his deceased siblings.

In making this determination, the Land Court considered and rejected Appellants' argument that controlling intestacy law at the time of Merep's death provided for patrilineal descent to Ngirboketereng. Appellants maintained that Resolution 8-55, approved in August 1955 and thus in effect at the time of Merep's death, mandated that, in the absence of a will, land passed to the oldest living male child. The Land Court held, however, that, based on its plain language, Resolution 8-55 addressed only land acquired in fee simple from the Government of the Trust Territory. Finding no suggestion that Merep acquired his land from the Government of the Trust Territory, the Land Court deemed Resolution 8-55 inapplicable. Additionally, the Land Court noted that Resolution 28-57, Palau's broader inheritance statute, applying to any land acquired in fee simple, was not approved until December 1959, two years after Merep's death.

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Finding no statute governing the disposition of Merep's land, the Land Court turned to Palauan custom. Wataru Elbelau, an expert witness on Palauan custom, testified that a decedent's siblings are the proper representatives to distribute the decedent's lands. In light of this testimony, the Land Court held that Lots 806, 807, and 808 -- the lands not specifically given to Ngirboketereng at the eldecheduch -- passed to the Youlbeluu Lineage. The children of Ngirboketereng appeal this ruling.

STANDARD OF REVIEW

Factual findings of the Land Court are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). This Court employs the *de novo* standard in evaluating the Land Court's conclusions of law. *Temaungil*, 9 ROP at 33.

DISCUSSION

Appellants assert that the inheritance law in effect in June 1957 provided for patrilineal inheritance of lands held in fee simple. In support of this claim, Appellants first cite to *Ngiruhelbad v. Merii*, 1 TTR 367 (Tr. Div. 1958), *aff'd*, 2 TTR 631 (1961), and encourage this Court to rely on Resolution 2-51, as the *Ngiruhelbad* Court did. *See Ngiruhelbad*, 1 TTR at 370.

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Resolution 2-51 discusses land ownership, inheritance, and use, and in section II.A., provides for patrilineal descent of individually-owned land.

Appellees insist, however, that any argument based on Resolution 2-51 was waived by Appellants' failure to address that resolution during the Land Court proceedings. Appellants concede this omission but argue in their reply brief that, because questions of law are reviewed *de novo*, they are free to cite any laws in support of their legal position that patrilineal descent was the controlling law in June 1957.

Appellants' reliance on Resolution 2-51 as a controlling statute is questionable at best given the uncertainty about whether the resolution was ever approved by the High Commissioner. See *Ngiruhelbad*, 1 TTR at 371. Indeed, the document seems to be merely a policy statement written in response to a request for suggestions for drafting land use laws. *Id.* And to the extent Appellants seek to identify this resolution as proof of a contrary custom or as evidence of the opinion of the Palauan leaders at the time, they have waived that argument by failing to raise it during the Land Court proceedings. *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 10 (1999); *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998).

Appellants also look to Resolution 28, identical in text to Resolution 28-57, which became Palau District Code § 801, the broader Palauan statute providing for patrilineal descent of all lands held in fee simple. Appellants cite to the appellate opinion in *Ngiruhelbad*, which references Resolution 28 as being passed by Congress in April 1957, *Ngiruhelbad*, 2 TTR at 634, and argue that Resolution 28 would therefore have been in effect when Merep died. The copy of Resolution 28 provided by Appellants, however, is signed and dated December 16, 1959, the same date Resolution 28-57 is recorded as being approved. It is unclear where the April 1957 date originated, but **128** nothing in the record would indicate that Resolution 28 was enacted prior to December 1959.

Appellants next urge this Court to interpret Resolution 8-55 as applying to all lands, not just those acquired from the Trust Territory Government. Appellants suggest that the historical context of Resolution 8-55 supports a broad reading to encompass all lands held in fee simple. The only rationale supporting this argument is Appellant's supposition that Resolution 8-55 was drafted as an extension to Resolution 2-51, which provided for patrilineal descent of individually-owned lands. As noted earlier, however, it is unclear whether Resolution 2-51 was ever approved by the High Commissioner, *Ngiruhelbad*, 1 TTR at 371, and nothing in the text of that resolution would require us to ignore the plain language of Resolution 8-55 and extend it beyond land acquired from the Government.

Appellants also maintain that reading Resolution 8-55 to apply only to land acquired from the Trust Territory Government violates the Equal Protection Clause of the Palau Constitution. Limiting the applicability of Resolution 8-55, Appellants suggest, impermissibly classifies individuals based on an "unreasonable consideration[]" -- namely, the source of their land. Instead, Appellants contend that "[a]ll lands held in fee simple should be governed by the same law regardless of who their prior owners were."

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It is unclear whether Appellants neglected to raise this argument before the Land Court, thus waiving it for purposes of this appeal. In any event, Appellants' short Equal Protection discussion fails to satisfy their heavy burden of proving that "no set of facts rationally could justify the classification." *United States v. Pollard*, 326 F.3d 397, 408 (3d Cir. 2003); *see also Ikeya v. Melaitau*, 3 ROP Intrm. 386, 392 n.2 (1993).

CONCLUSION

We affirm the Land Court's Determination of Ownership.